IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3085 of 2005
With
SPECIAL CIVIL APPLICATION No. 13838 of 2005
With
SPECIAL CIVIL APPLICATION No. 13886 of 2005
With
SPECIAL CIVIL APPLICATION No. 13905 of 2005
With
SPECIAL CIVIL APPLICATION No. 13842 of 2005
With
SPECIAL CIVIL APPLICATION No. 13844 of 2005
With
SPECIAL CIVIL APPLICATION No. 13848 of 2005
With
SPECIAL CIVIL APPLICATION No. 13855 of 2005
With
SPECIAL CIVIL APPLICATION No. 13860 of 2005
With
SPECIAL CIVIL APPLICATION No. 13867 of 2005
With
SPECIAL CIVIL APPLICATION No. 13869 of 2005
With
SPECIAL CIVIL APPLICATION No. 13876 of 2005
With
SPECIAL CIVIL APPLICATION No. 19296 of 2005
With
SPECIAL CIVIL APPLICATION No. 19507 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYKUMAR FULABHAI BRAHMBHATT & 9 - Petitioner(s)

Versus

MAFATLAL APPAREL MFG. CO LTD & 1 - Respondent(s)

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Appearance :

In SCA No. 3085/2005,

Mr.R.V. Desai for Petitioner

Mr.K.M. Patel for Respondent no.1

Mr.P.D. Bhatte, LD AGP for Respondent no.2.

In SCA Nos. 13838/2005,13905/2005,13842/2005,13844/2005,13848/2005, 13855/2005,13860/2005,13867/2005 and 13869/2005

Mr.K.M. Patel for Petitioner

Mr.R.V. Desai for Respondent

In SCA Nos. 13886/2005 and 13876/2005

Mr. K.M. Patel for the Petitioner

Mrs. Sangita Pahwa for the Respondent

In SCA Nos.19296/2005 and 19507/2005

Mrs. Sangeeta N. Pahwa for the Petitioner

Mr. K.M. Patel for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/10/2005

CAV JUDGMENT

1.In this group of petitions, since similar questions of law and facts are arising, they were heard together and

are being disposed of by this common order.

2. The petitions have been filed by the employer as well as employees challenging different parts of the same order passed by the Industrial Tribunal, Nadiad.

3. The facts leading to the present group of petitions can be noted at this stage.

3.1 Mafatlal Apparel Manufacturing Company Limited is the petitioner in group of petitions being Special Civil Application No. 13828/2005 and allied matters. Mafatlal Apparel Manufacturing Company Limited shall be hereinafter referred to as “the said Company”. The workmen concerned involved in this group of petitions were employed by the said Company. For certain alleged conduct on part of the workmen, the said Company passed penal orders dismissing the workmen from service concerned along with several other similarly situated workmen. Since certain proceedings were pending before the Industrial Tribunal, the said Company filed approval applications before the Industrial Tribunal, Nadiad seeking approval of its action in terms of provisions of Section 33 of the Industrial Disputes Act. Sometimes thereafter, however, the said Company

sought permission to withdraw such applications. The application for withdrawing the approval applications came to be filed on 07-07-1999 before the Industrial Tribunal. The Tribunal permitted the said Company to withdraw the approval application by an order dated 8th September, 1999. The workmen concerned which includes the workmen who are the petitioners in Special Civil Application Nos. 3085/2005 19296/2005, and 19507/2005 therefore, filed separate complaint applications under section 33-A of the Industrial Disputes Act on 04-11-1999 before the Industrial Tribunal complaining of breach of provision of Section 33(2)(b) of the Industrial Disputes Act. It was the case of the workmen that the said Company having withdrawn the approval applications, effect of not obtaining approval from the Industrial Tribunal would be that the action of dismissing the services of the concerned workmen would be rendered ineffective and ab-intio void. The stand of the said Company which resisted such applications was that in view of the decision of the Hon'ble Supreme Court in the case of M/s. Punjab Beverages Pvt. Ltd. Suresh Chand & anr. reported in AIR 1978 SC 995, withdrawal of approval applications would not render the order of dismissal or discharge inoperative.

3.2Upon the pronouncement of the decision of the Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others reported in (2002)2 Supreme Court Cases 244, the concerned workmen requested the Industrial Tribunal to decide the complaint applications on preliminary issues contending inter-alia that the employer having filed approval applications, but thereafter, having withdrawn the same, effect of such a situation would be to render the orders by the employer ineffective and non-est. The Industrial Tribunal by its first order dated 01-08-2003 allowed the complaints filed by the workmen concerned. It was held that the dismissal of the complainant-workmen brought about by the said Company are illegal and inoperative being in violation of section 33(2)(b) of the Industrial Disputes Act. It was further held that all the workmen to be considered in continuous service with all consequential benefits including back-wages from the date of their dismissal. It was however, provided that they would be entitled to reinstatement, but if at all the Company is closed, in that case the Company will only be liable to pay full back-wages to the concerned workmen up to the date when the Company was closed down. The operative portion of the order of the Industrial Tribunal dated 01-08-2003 reads as

follows :

"1. These complaints are allowed. The dismissal of the complaints/workmen brought about by the company is hereby held to be illegal, inoperative being in violation of Sec. 33(2)(b) of the Industrial Disputes Act, 1947. All the said workmen are held to be in continuous service of the Company with all the consequential benefits including full back wages right from the date of their dismissal. They are also entitled to reinstatement to their original posts, but if at all the company is closed in that case, the Company will only be liable to pay full back wages the concerned workmen up to the date when the company was closed down.

2. The Company shall also pay Rs. 100/- (Rupees one hundred only) by way of costs to each of the workmen."

3.3Both sides were aggrieved by the said order passed by the Industrial Tribunal. The said Company was aggrieved in so far as the Industrial Tribunal declared the dismissal of the workmen as illegal and inoperative and provided for consequential relief. The concerned workmen were aggrieved by the stipulation provided by the Industrial Tribunal that the reinstatement will be carried out only if the Company is not closed down in the mean time.

3.4Both the sides therefore, filed review applications before the Industrial Tribunal. Both review applications came to be rejected by the Industrial Tribunal by a common order dated 07-08-2004. The

employer as well as the concerned workmen have therefore, referred the present group of petitions challenging the order passed by the Industrial Tribunal on 01-08-2003 as well as on 07-08-2003 by which review applications of both the sides came to be rejected.

3.5Special Civil Application Nos. 13838/2005, 13842/2005, 13844/2005, 13848/2005, 13855/2005, 13860/2005, 13863/2005, 13867/2005, 13869/2005, 13876/2005, 13877/2005, 13886/2005, 13905/2005, have been filed by the employer-Company challenging the orders passed by the Tribunal. The employer-Company is aggrieved by the declaration that the dismissal orders were illegal and inoperative. They have also challenged the consequential directions for reinstatement and full back-wages. On the other hand, Special Civil Application Nos. 3085/2005, 19296/2005 and 19507/2005 have been filed by the concerned workmen challenging the orders in so far as the Industrial Tribunal provided in its impugned orders that though the workmen would be entitled to reinstatement, if at all in the mean time the Company is closed down, the workmen would be entitled to receive wages from the date of dismissal

till the date of closure of the Company.

4. Appearing for the employer-Company, the learned advocate Shri K.M.Patel submitted that the Industrial Tribunal gravely erred in allowing the complaint applications and passing the eventual orders. He submitted that the said Company had withdrawn the approval applications on the basis of the law prevailing at the relevant time as laid down by Hon'ble Supreme Court in the case of M/s. Punjab Beverages Pvt. Ltd. Suresh Chand & anr.(Supra). He submitted that law laid down by the Hon'ble Supreme Court in the subsequent decision in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra) could not have been applied to the present case where cause of action had arisen long before the decision of the Hon'ble Supreme Court. In short, his contention was that the decision of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra) should be applied prospectively and the ratio laid down therein would apply to a case where cause of action arises after the decision of the Hon'ble Supreme Court.

4.1 Additionally, it was contended that the

Industrial Tribunal erred in providing for 100% back-wages for the entire period from the date of dismissal till reinstatement. It was contended that the question of back-wages ought to have been addressed to by the Industrial Tribunal and there could not have been any mechanical direction for payment of 100% back-wages. He submitted that the employer should have been given an opportunity to lead proper evidence to establish gainful employment of the workmen and other relevant factors to canvas before the Industrial Tribunal that even if the order of dismissal is rendered ineffective on account of want of approval, 100% back-wages should not be granted.

5. On the other hand, learned advocate Shri R.V. Desai and learned advocate Mrs. Sangita Pahwa appearing for the concerned workmen jointly submitted that the orders passed by the Industrial Tribunal declaring the dismissal of the concerned workmen as illegal, call for no interference. They supported the directions for reinstatement and full back-wages and contended that the effect of the employer withdrawing the approval applications would be that the dismissal orders are rendered illegal, unlawful, non-est and ab-initio void. It was contended that when the dismissal orders are

rendered inoperative from the very inception, there is no option with the Industrial Tribunal but to provide for full back-wages.

5.1 They further contended that stipulation provided for by the Industrial Tribunal that the employer was carrying out the reinstatement of the concerned workmen, unless in the mean time, the Company is closed down, was neither justified nor warranted. It was contended that before the Industrial Tribunal there was no material to suggest that the Company was closed down and in any case legality of such alleged closure was never at issue before the Industrial Tribunal. It was therefore, contended that such a rider provided for by the Industrial Tribunal in the impugned orders is required to be deleted.

6. Having heard the learned advocates appearing for the parties, following three main questions are required to be decided.

1. Whether the decision of the Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra) has prospective application as contended by the learned advocate for

the Company?

2.Whether the Industrial Tribunal was justified in providing for stipulation that though the workmen were entitled to reinstatement, but if the Company is closed, in that case the Company shall pay full back-wages only upto the date when the Company was closed down ?

3.Whether the Industrial Tribunal was justified in providing for full back-wages for the intervening period ?

7.With respect to the first question as noted earlier, the contention of learned advocate Shri Patel was that the decision of the Hon'ble Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra) has prospective application and would not apply to the case where cause of action arose prior to the declaration of the decision by the Hon'ble Supreme Court. In this regard he pointed out the order passed by the Hon'ble Supreme Court while referring the issue to the larger bench which has been reported in (1994) 6 Supreme Court Cases 522. He particularly stressed the observations made by the

Bench in para.4 of the said order wherein it was stated that the point arises in a number of cases and in view of the conflicting decisions, it presents difficulty to all the Courts. It is therefore, necessary that the law on the subject is settled for future. It was his contention therefore, that when the referral order itself suggests that law that may be laid down by larger bench should apply in future, the decision of the larger bench should not be applied retrospectively to all the pending cases.

7.1The law of prospective overruling was discussed at length by Hon'ble Supreme Court in the case of Managing Director, ECIL, Hyderabad etc. v/s. B. Karunakar etc. reported in AIR 1994 Supreme Court 1074. Tracing the history of the concept of prospective overruling to the decision of the Hon'ble Supreme Court in the case of L.C. Golak Nath v. State of Punjab reported in AIR 1967 SC 1643, it was observed in the said decision that in the case of Golak Nath following propositions were laid down :

> "(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its

earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.”

7.2Thus, tracing the roots of the concept of prospective overruling, the bench also noted the subsequent instances wherein the Hon'ble Supreme Court had applied such prospective overruling in different cases. Referring to the need to make the law laid down by the Hon'ble Supreme Court in the Mohd. Ramzan Khan's case reported in AIR 1991 SC 471, in para.8 the Hon'ble Supreme Court made the following observations :

“8. The need to make the law laid down in Mohd. Ramzan Khan's case, (AIR 1991 SC 471) (supra) prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases,the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account.

Hence we hold as above. “

7.3In the case of M.A. Murthy v. State of Karnataka and others reported in (2003) 7 Supreme Court Cases 517, the Hon'ble Supreme Court observed that normally the decision rendered by the Supreme Court is assumed to be the law from inception and unless the Apex Court indicated that a particular decision is prospective in operation, it cannot be treated as such. In this regard in para.8, the Hon'ble Supreme Court has made the following observations:

> “8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath v. State of Punjab. In Managing Director, ECIL v. B. Karunakar the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases.(See Ashok Kumar Gupta v. State of U.P. and Baburam v. C.C. Jacob.) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there

> shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to he held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case No.II. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes,the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."

7.4 From the above it can be seen that unless it is so indicated in particular decision by the Hon'ble Supreme Court, the decision would apply to all pending cases. In the case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra), it has never been provided that the decision will apply prospectively. The same therefore, has to apply to all cases which have arisen and which are pending on the date the decision was rendered. It is not possible to accept the contention of the learned advocate Shri Patel that the decision of the Hon'ble Supreme Court in case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra) can be applied

only to those cases where cause of action arose after the decision was rendered. The learned advocate Shri R.V. Desai also pointed out the decision of Madras High Court in the case of Ramanujan C., Chengai District v/s. Presiding Officer,Industrial Tribunal, Madras and another reported in 2004-I-LLJ 294 wherein also the Learned Single Judge of Madras High Court has taken a similar view.

8. In view of the above discussions, I am unable to accept the contention of the learned advocate Shri Patel that the decision of the Hon'ble Supreme Court in case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra) has only prospective application.

9. The next question that calls for consideration is whether the Industrial Tribunal was justified in providing for a condition that the workmen concerned would be reinstated unless the Company was closed down in the mean time. To my mind there was no material on record to permit the Industrial Tribunal to provide for such a stipulation. Whether the said company was closed down or not and even if closed down, whether such a closure was in accordance with law or not were the

questions which were never before the Industrial Tribunal. For want of any material on record, it was not open for the Industrial Tribunal to provide for such a condition. The stipulation in this regard therefore, cannot be sustained.

10.The next question is with regard to the direction issued by the Industrial Tribunal for payment of back-wages from the date of dismissal till reinstatement of the workmen. While giving such a direction, the Industrial Tribunal observed in its order dated 01-08-2003 that usually the Tribunal may not allow full back-wages for such a long period of approximately 10 years, but the decision of the Hon'ble Supreme Court in case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra) has left no room for the Tribunal to reduce the wages as the Company has committed breach of the provisions of section 33(2)(b) of the Industrial Disputes Act and as per the decision of the Hon'ble Supreme Court, workmen concerned should be held to be in continuous employment with all consequential benefits.

10.1Even the learned advocates appearing for the workmen contended that by virtue of the decision of Hon'ble

Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra) only option available with the Industrial Tribunal was to provide for reinstatement and full back-wages. It was pointed out that in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra), the Hon'ble Supreme Court observed that the relationship of employer and employee comes to an end de-jure only when the authority grants approval. If the approval is not given, nothing more is required to be done by the employee as it will have to be deemed that order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have been continued in services entitling him to all the benefits available.

10.2It is no doubt true that when though required, approval has not been sought from the Labour Court and the Industrial Tribunal for dismissing the workmen concerned, such action of the employer would be rendered inoperative. When approval application is though filed later on withdrawn or rejected, the same situation would arise. The question is whether in such a case automatically there would be entitlement to the

workmen to receive 100% back-wages regardless of the factual background.

10.3In the decision of P.G.I. Of M.E. And Research, Chandigarh v/s. Raj Kumar etc. reported in AIR 2001 Supreme Court 479, the Hon'ble Supreme Court observed that payment of back-wages has a discretionary element involved in it and it has to be dealt with the facts and circumstances of each case and no straight jacket formula can be evolved.

10.4In the decision of Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and another reported in AIR 2002 Supreme court 2676, the Hon'ble Supreme Court observed that even where reinstatement is ordered, relief of full back-wages need not follow as a matter of course.

10.5In the decision of Indian Railway Construction Co. ltd. v/s. Ajay Kumar reported in AIR 2003 Supreme Court 1843 also Hon'ble Supreme Court highlighted the discretionary nature of back-wages.

10.6In the decision of M.P. State Electricity Board v. Smt. Jarina Bee reported in AIR 2003 Supreme Court 2657, the Hon'ble Supreme Court held that the awarding

of full back-wages is not a natural consequence for setting aside the order of removal.

10.7In a recent decision in the case of Rajasthan State Road Transport Corpn. v/s. Shyam Bihari Lal Gupta reported in (2005) 7 Supreme Court Cases 406, the Hon'ble Supreme Court upheld the contention of the employer that even where decree is passed by the Court declaring the termination of the employee as void ab-initio and non-est and the employee is in continuity of service, would not enable the employee to claim back-wages when there was no such direction for payment of monetary benefits.

10.8In the decision of General Manager, Haryana Roadways v/s. Rudhan Singh reported in (2005) 5 Supreme Court Cases 591, the Hon'ble Supreme Court made the following observations :

> “8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and

balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small,the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

10. In Saran Kumar Gaur v. State of U.P. this court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. v. Atal Behari Shastri a termination order passed on 15-7-1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27-11-1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in the absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump sum amount of Rs. 25,000. In Virender Kumar v. Avinash Chandra Chadha there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle of “no work no pay” as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh v. Chairman and MD, UCO Bank the appellant (Assistant Manager in the Bank) was dismissed from service on 28-5-1985, but his appeal was allowed by this Court on 6-2-1995 as his dismissal order was found to be suffering from an

inherent defect. His claim for arrears of salary for the past period came to about Rs. 20 lakhs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs. 50,000 be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta v. State of Bihar the appellants were employed as daily-wage employees in Water and Land Management, Institute of the Irrigation Department of the Government of Bihar and they were working on the posts of Stenotypists, typists, machine operators and peons,etc. This court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but a host of factors are to be taken into consideration before passing any order for award of back wages."

10.9 From the above discussion, it can be seen that even when the order of dismissal or discharge is held inoperative, question of treating the intervening period from the date of dismissal till reinstatement is required to be regulated by the concerned Court on the basis of material available on record and there cannot be a straight jacket formula for providing full back-wages in every case. Gainful employment by the concerned workmen in the mean time would be a relevant factor which cannot be ignored. Accepting the contention of the learned advocates appearing for the workmen that in all cases regardless of factual situation, once the Industrial Tribunal comes to a conclusion that approval for the order of dismissal or

discharge though required was not obtained by the employer, 100% back-wages must follow, would lead to incongruous situation. In a given case, the employer may be in a position to establish before the Industrial Tribunal that employee had earned wages substantially higher than the back-wages for the intervening period. In such a situation also, is the Industrial Tribunal duty bound to provide for full back-wages ? Answer to such a question has to be in negative. It is therefore, not possible to uphold the contention of the advocates appearing for the workmen that the moment the Industrial Tribunal came to the conclusion that the orders of dismissal were illegal being opposed to the provision of section 33(2)(b) of the Industrial Disputes Act, full back-wages was required to be provided for and justly granted.

10.10In view of the above conclusion, it is not possible to uphold the directions for payment of back-wages. There was no material before the Industrial Tribunal to come to the conclusion with respect to appropriate back-wages to be paid to the workmen concerned. In-fact the plea of the employer-Company that it should be permitted to lead evidence to oppose the direction for payment of back-wages, was not accepted by the

Industrial Tribunal. It would therefore, be necessary to remand the proceedings before the Industrial Tribunal to permit both the sides to lead evidence with respect to the question of back-wages.

11. In the result, this group of petitions are being disposed of with following conclusions and directions :

1. The stipulation that the employer-Company will not be required to reinstate the workmen, if the Company is closed down in the mean time, is held to be unsustainable.

2. The conclusion of the Industrial Tribunal that by virtue of decision of the Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank ltd. v/s. Ram Gopal Sharma and others(Supra), the dismissals of the concerned workmen are illegal and ineffective, is upheld.

3. The proceedings are however, remanded to the Industrial Tribunal for passing fresh orders in accordance with law and bearing in mind observations made here-in-above with respect to the back-wages for the intervening period after permitting both the sides to lead evidence in this regard. The Industrial

Tribunal is requested to complete this exercise as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this order.

4. The workmen are clamouring for justice since many years. The Industrial Tribunal had already granted 100% back-wages. The proceedings are remanded only for the purpose of passing fresh orders with respect to back-wages. It would therefore, be appropriate to direct the employer-Company to pay a certain ad hoc lump sum amount to each of the workmen concerned in this group of petitions which payment will be subject to further orders regarding back-wages that the Industrial Tribunal may pass. It is therefore, provided that employer-Company shall pay an amount of Rs. 25,000/-(Rupees Twenty Five Thousand Only) to each workman concerned in this group of petitions and such amount shall be paid latest by 15th November, 2005. Such payments will be adjusted towards the entitlement of the back-wages of the workmen concerned as per the fresh orders that Industrial Tribunal may pass.

12. With these directions, the petitions are disposed of. Rule made absolute to the limited extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)